

1. Sukhdeo Manjhi S/o Jharoo Manjhi			
2. Barli Manjhi S/o Late Bhiku Manjhi			
Both R/o Village- Lodhkiyari, P.O. & P.S. Kasmar, Dist.-			
Bokaro, Jharkhand	Petitioners
	Versus		
The State of Jharkhand	Opposite Party

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioners : Mr. Jitendra Shankar Singh, Advocate
For the Informant : Mr. Saibal Mitra, Advocate
For Opp. Party - State : Mr. Manoj Kumar Mishra, Advocate

Through Video Conferencing

Pronounced on 17/08/2021

1. Heard Mr. Jitendra Shankar Singh, learned counsel appearing on behalf of the petitioners.
2. Heard Mr. Saibal Mitra, learned counsel appearing on behalf of the informant.
3. Heard Mr. Manoj Kumar Mishra, learned counsel for the opposite party- State of Jharkhand.
4. This criminal revision application is directed against the judgement dated 07.02.2014 passed by learned Additional Sessions Judge-I, Bermo at Tenughat in Criminal Appeal No. 37 of 2010 dismissing the appeal filed by the petitioners.
5. The petitioners have been convicted vide judgement dated 06.05.2010 passed by learned S.D.J.M., Bermo at Tenughat (Bokaro) in G.R. Case No. 109/2000 and T.R. No. 81/2010 and sentenced to undergo
Simple Imprisonment for one year for offence committed under Section 504 of Indian Penal Code;
Simple Imprisonment for two years for offence committed under Sections 123/125 of Representation of the People Act, 1951 with a fine of Rs. 2,000/- each and in default in payment of

fine, the petitioners have been directed to further undergo Simple Imprisonment for two months each.

All the sentences were directed to run concurrently.

Arguments of the petitioners

6. It is submitted that the *Representation of the People Act, 1951* (hereinafter referred to as the Act of 1951) deals with the procedure and the offences committed during the course of election notified by the Election Commission. Section 123 thereof deals with corrupt practices during the election and is not a penal provision. Section 125 deals with promoting enmity between classes of citizens in connection with the election on the ground of religion, race, caste, community or language, and is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

7. It is submitted that the prosecution has miserably failed to prove that the alleged occurrence had taken place during election period. The prosecution has also not proved any notification issued by Election Commission suggesting that at the time of the alleged occurrence, there was any election. The prosecution witnesses, in their deposition, have not stated about any election being held during the period the alleged offence had taken place and none of the prosecution witnesses has stated that the petitioners have promoted or have made any attempt to promote feeling of enmity or hatred on the ground of religion, race, caste, enmity or language.

8. It is submitted that no case under Section 125 of the aforesaid Act of 1951 is made out.

9. It is further submitted that the basic ingredient to attract offence under Section 504 of Indian Penal Code is also missing in the present case. P.W. 5 – the informant of the case has categorically stated in para 5 of his deposition that the accused persons have committed no offence with him when he tried to forbid them. Further, P.W. 2 in para 1 of his deposition has

stated that after burning the banner, the accused persons returned to their house. He has also referred to the deposition of P.W. 3 and has submitted that in para 6 of his deposition, he has stated that he had not seen any tension between the accused persons and the informant. P.W. 1 has also not stated in his deposition about any act of insult leading to any provocation. In view of the aforesaid background, the learned counsel has submitted that taking into consideration the deposition of P.Ws. 1, 2, 3 and 5, it transpires that there is no evidence to suggest that the accused persons have intentionally insulted the informant to give provocation, intending or knowing that such provocation will cause him to break public peace or commit any other offence. The learned counsel submits that the learned trial court as well as the learned appellate court has failed to consider that the basic ingredients to constitute offence under Section 504 of Indian Penal Code are totally missing.

10. So far as the seizure is concerned, the learned counsel submits that the seizure list has not been proved by the prosecution nor has been marked as exhibit during trial. P.W. 4 has merely identified his signature on the seizure-list. However, in para 9 of his deposition he has categorically stated that he had not read the contents of the seizure-list nor the same was read over to him and hence the learned trial court as well as the learned appellate court has committed grave error while considering the seizure-list which has not been duly proved by the prosecution. He also submits that the material exhibit i.e. the alleged burnt banner which is the genesis of the case, has also not been produced before the court.

11. It is submitted that no case under Section 504 of Indian Penal Code is also made out.

12. It is submitted that the conviction and sentence of the petitioners is bad in law and is fit to be set-aside.

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Arguments of the opposite parties

13. The learned counsel appearing on behalf of the informant, on the other hand, has vehemently opposed the prayer of the petitioners and has submitted that there are concurrent findings recorded by the learned courts below and accordingly there is no scope for re-appreciation of evidences and coming to a different finding in revisional jurisdiction. He submits that no illegality or perversity as such has been pointed out by the learned counsel appearing on behalf of the petitioners. The learned counsel has also submitted that for constituting offence under the aforesaid sections, there is no condition prescribed that the offence can be committed within the purview of the said section, only after an election is announced. He submits that it has come in the evidence of P.W-2 that act of the petitioners resulted in tension in connection with election. He submits that the impugned judgements do not call for any interference and accordingly, the present petition be dismissed.

14. The learned counsel for the opposite party- State has also opposed the prayer of the petitioners and has supported the submissions made by the learned counsel for the informant.

Findings of this Court

15. As per the written report of the informant – P.W. 5, on 05.02.2000 at about 07 a.m., the petitioners burnt the banner of B.J.P, which was attached at the door of his house, by *mashal*. He tried to stop them but they threatened him for beating and abused him. It was also alleged that the accused also stated that they would burn all the flags and banners of B.J.P. At the relevant time and place of occurrence, the P.Ws. 1 and 2 also tried to stop the petitioners, but they did not listen to them.

16. On the basis of the written report of the informant, formal First Information Report was drawn under Sections 285/504/34 of Indian Penal Code and Sections 123/125 of Representation of the People Act, 1951 against the petitioners. After investigation,

charge-sheet was submitted under the aforesaid sections against the petitioners. The contents of the accusation were read over to them and explained, to which they denied and claimed for trial.

17. The prosecution examined five witnesses. After closure of the prosecution evidence, the petitioners were examined but they were in complete denial of the incident and alleged false implication. However, the defence did not lead any evidence.

18. The informant of the case, **P.W. 5**, has fully supported the prosecution case. He has stated that the incident had taken place on 05.02.2000 at 07 to 08 a.m. and he was present in his house. He saw some persons were sitting below the *Neem* tree and they were talking amongst themselves that he was the party worker of J.M.M., but now has joined B.J.P. The petitioners burnt the banner of B.J.P which was in front of his house. He has also stated that he had given a written report at the police station which was in his writing (**Exhibit-2**). P.W. 5 claimed to identify the petitioners who were represented. This witness has been dully cross-examined by the defence and has stated that the incident was seen by P.Ws. 1, 2 and 3. Thus, it appears that P.W. 5 is an eye-witness to the occurrence and has fully supported the prosecution case and has claimed that the incident was also seen by P.Ws. 1, 2 and 3.

19. So far as the P.W. 1 is concerned, he has also fully supported the prosecution case. He has stated that at the time and place of occurrence, he was at the door of P.W. 5. He has stated that the banner of B.J.P. was burnt by the present petitioners and he had seen the occurrence. He identified the petitioner no. 2 and claimed to identify petitioner no. 1 who was on representation. This witness has been cross-examined by the defence. He has stated that he is not a worker of BJP and the petitioners were workers of one Madho Babu. Thus, this

witness has also fully supported the prosecution case and is an eye witness to the occurrence.

20. So far as P.W. 2 is concerned, he is also an eye-witness to the occurrence and he has also stated that he was present at the time and place of occurrence at the door of his house. He has stated that the petitioners had come and asked as to who had tied the banner and upon coming to know that the same was planted by the informant i.e., P.W. 5, both of them went below the flag and petitioner no. 1 set the banner ablaze using *mashal* and the flag was of B.J.P. Thereafter, both of them went to their house. This witness identified petitioner no. 2, who was present in the court and claimed to identify the petitioner no. 1 also. This witness has also been cross-examined by the defence. He has stated that there was no tension in the village regarding election, but the incident caused tension in the village. The banner was tied with rope on which it was written, your election symbol is lotus flower. He has stated that he is not a member of any political party and that he had given his statement to the police. Thus, this witness has fully supported the prosecution case and has clearly stated that the banner indicated about the election symbol as lotus flower and the incident caused tension in connection with the election.

21. P.W. 3 is again an eye-witness to the occurrence. He was also present at the place and time of occurrence. He has stated that 2 to 4 men were talking and a flower symbol banner was tied in front of the door of the informant. The petitioners asked about the banner to which the informant raised a query and after some time, the petitioners set fire to the banner. This witness has also identified/claimed to identify the petitioners. This witness has been cross-examined and he has stated that he had seen the burning of banner by the petitioners.

22. P.W. 4 is a witness to the seizure. He has identified his signature on the seizure-list which was marked as Exhibit-1. He

has stated that on 05.02.2000, one boy came and informed him that the banner of B.J.P. was burnt by opposite party workers. Thereupon, he alongwith party workers reached at the door of the informant and saw the burnt banner which was seized by the police. He saw that banner was burnt by the opposite party workers and the police had recorded his statement.

23. The learned trial court in para 12 of its judgement considered the allegations in the light of Sections 285 and 504 of Indian Penal Code and recorded that the ingredients of Section 285 of Indian Penal Code were not proved beyond reasonable doubt. So far as the offence under Section 504 of Indian Penal Code is concerned, the learned trial court found that the prosecution witnesses in their evidence have stated that the accused had burnt the banner at the door of the informant and consequently, the act of the accused amounts to threatening the informant and affecting his peace. The learned trial court found that the basic ingredients for offence under Section 504 of Indian Penal Code were duly satisfied.

24. The learned trial court, in para 13 of the impugned judgement, considered the incident in the light of offence under Sections 123/125 of the aforesaid Act of 1951 and recorded that the prosecution witnesses have consistently stated that the petitioners had burnt the banner belonging to B.J.P. which was tied at the door of the informant and they are eye-witness to the occurrence. The learned trial court also considered the cross-examination of P.W. 2, para 3, where he stated that after burning of the banner there was tension in the village and there was all likelihood of causing dissent or enmity in the society. The learned trial court has also recorded that the prosecution witnesses had stated that the accused were workers of leader of congress party, namely Madho Lal Singh and the alleged occurrence had taken place to hinder free and fair election. The learned trial court held that offence under Sections 123/125 of

the aforesaid Act of 1951 was proved beyond all reasonable doubts. The learned trial court also recorded that the witness nos. 1, 2, 3 and 4 were people living in the vicinity of place of occurrence, who have fully supported the prosecution case. By referring to the seizure-list, the learned trial court mentioned that the details and contents of the banner were mentioned in the seizure list and it was also mentioned that vote be casted in favour of the candidate of B.J.P.

25. The learned trial court ultimately convicted the petitioners for offence under Sections 123/125 of Representation of the People Act, 1951 and also under Section 504 of Indian Penal Code.

26. So far as the learned appellate court is concerned, the learned appellate court also recorded its finding at para 15 of the judgement as follows:

“15. Thus, it appears from the statements of P.W. 1, 2, 3 and 5 that on 05.02.2000 at about 7 O’ clock a few persons were sitted below the tree of Neem and they were talking themselves. One banner was installed by Bishnu Charan Mahto at the door of his house. The banner belonging to B.J.P. Sukhdeo Manjhi and Barli Manjhi came there and they asked about planting of the B.J.P. banner. That banner was burnt by Sukhdeo Manjhi and Barli Manjhi and thereafter both the persons went away. The matter was reported to the Police at Kasmar P.S. which was in the writing and signature of Bishnu Charan Mahto which was exhibited mark-2. The seizure list was prepared of the burnt banner upon which the witnesses made their signatures. P.W. 4 the seizure list witness admitted this fact before the court. He identified his signature on it which is exhibited as mark-1. The Lower Court convicted both the accused persons/appellants namely Sukhdeo Manjhi and Barli Manjhi for the charges U/S 504 I.P.C. and were sentenced to undergo S.I. for one year each. Both the accused persons/appellants were further convicted U/S 123/125 of Public Representative Act and they were sentenced to

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undergo S.I. for two years each alongwith fine of Rs. 2,000/- (Two thousand) each and in case of failing to pay the fine both convicts will further imprisonment of S.I. for 2-2 months each."

27. This court finds that there are sufficient materials on record to prove that a B.J.P. banner was tied at the gate of the house of the informant indicating that the symbol of casting vote for B.J.P. was lotus flower; the petitioners came and burnt the same with *mashal*; there was no tension in the village with regards to election but the incident resulted in spreading tension in the village. There are four eye witnesses to the occurrence including the informant and P.W-4 is the seizure witness who has supported the seizure of the burnt banner, however the seized burnt banner has not been produced.

28. It has been argued by the learned counsel for the petitioners that the prosecution has miserably failed to prove that the alleged occurrence had taken place during election period as the prosecution has also not proved any notification issued by Election Commission suggesting that at the time of the alleged occurrence, there was any election. It has also been argued that the seizure has not been proved as the seized burnt banner has not been exhibited.

This court is of the considered view that merely because the notification issued by the Election Commission regarding election has not been proved, the same is not fatal to the prosecution case. This Court finds that the learned courts below while convicting the petitioners for offence under Sections 123/125 of the aforesaid Act of 1951 have, *inter alia*, considered the evidence of P.W-2 who has clearly stated that there was no tension in the village in connection with the election but the incident caused tension in the village in connection with the election. It has also come in evidence that the banner which was burnt belonged to B.J.P. and in the banner, it was written that your election symbol is lotus flower. In view of the evidences

on record, the impugned judgements on the point of conviction of the petitioners under Sections 123/125 of the aforesaid Act of 1951 cannot be said to be perverse on account of not proving the notification issued by Election Commission suggesting that at the time of the alleged occurrence, there was any election. This Court is also of the considered view that in view of the aforesaid evidences on record, non-production of the seized burnt banner is also not fatal to the prosecution case. Admittedly, the seizure witness has deposed as P.W-4 and has fully supported the prosecution case.

29. It has also been argued that none of the prosecution witnesses have stated that the petitioners have promoted or have made any attempt to promote feeling of enmity or hatred on the ground of religion, race, caste, community or language.

30. Section 125 of Representation of the People Act, 1951 is quoted as under:

“125. Promoting enmity between classes in connection with election.- Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.”

31. The word “community” or “classes of citizens of India” used in Section 125 has not been defined under the provisions of Representation of the People Act, 1951. As per the Black’s Law Dictionary, the term “community” means :- (i) in neighborhood, vicinity or locality (ii) a society or group of people with similar rights or interests (iii) joint ownership, possession or participation.

32. This Court is of the considered view that members of one political party in connection with an election under the aforesaid Act of 1951 would constitute a “community” when seen in the light of the aforesaid dictionary or literal or natural meaning of the word “community” and supporters of one

political party would also constitute a “class of citizens of India”. Although the term “community” has been used along with the terms race, religion, caste and language but this by itself cannot curtail the natural, literal and dictionary meaning of the term “community” when seen in the light of very object and purpose of the Act of 1951. The various expressions used in Section 125 i.e. religion, race, caste, community and language themselves have their own peculiar characteristics and merely because the term “community” has been used along with aforesaid words, the same is not enough to give a narrow meaning to the word “community”, narrower than its natural, literal and dictionary meaning. This Court also finds that the term “political party” has been defined under the aforesaid Act of 1951 in Section 2(f) to mean an association or a body of individual citizens of India registered with the Election Commission as a political party under Section 29-A which in turn provides for registration of associations and bodies as political parties with the Election Commission.

33. Thus, this Court is of the considered view that the political party by itself is an association or body of individual citizens of India and therefore, members of the political party constitute a community within the meaning of Section 125 of the aforesaid Act of 1951.

34. Thus, the argument of the petitioners that the witnesses have not stated that the petitioners have promoted or have made any attempt to promote feeling of enmity or hatred on the ground of religion, race, caste, community or language, is devoid of any merit. This Court finds that the petitioners had burnt the banner of a political party, which has resulted in tension and there was likelihood of causing dissent or enmity in the society due to the act of the petitioners. The act of the petitioners had the effect of causing enmity or hatred between political communities. This Court finds that the basic ingredient

for commission of offence under Section 125 of the aforesaid Act of 1951 was duly satisfied and the learned courts below have rightly convicted the petitioners.

35. In the judgement passed by the Hon'ble Supreme Court reported in (2017) 2 SCC 629 (7J) (*Abhiram Singh Vs. C. D. Commachen (Dead) through their Legal Representatives*), the Hon'ble Supreme Court has considered the legislative history of law relating to election in India and has laid down the manner in which law relating to election in India should be interpreted. Provisions of Section 123 of Representation of the People Act, 1951 with particular reference to sub-section (3) and (3A) and Section 153A of Indian Penal Code were under consideration in the said judgment. At paragraph 35 of the aforesaid judgement, the Hon'ble Supreme Court was of the view that in the context of various provisions of Section 123 of the 1951 Act, the Constitution makers intended a secular democratic republic where differences should not be permitted to be exploited. The Hon'ble Supreme Court also considered a literal interpretation and a purposive interpretation of statute in paragraph 36 onwards and held in paragraphs 39, 40 and 50 as under:

"39. We see no reason to take a different view. Ordinarily, if a statute is well drafted and debated in Parliament there is little or no need to adopt any interpretation other than a literal interpretation of the statute. However, in a welfare State like ours, what is intended for the benefit of the people is not fully reflected in the text of a statute. In such legislations, a pragmatic view is required to be taken and the law interpreted purposefully and realistically so that the benefit reaches the masses. Of course, in statutes that have a penal consequence and affect the liberty of an individual or a statute that could impose a financial burden on a person, the rule of literal interpretation would still hold good.

40. The Representation of the People Act, 1951 is a statute that enables us to cherish and strengthen our democratic ideals. To interpret it in a manner that assists candidates to an election rather than the elector or the electorate in a vast democracy like ours would really be going against public interest. As it was famously said by Churchill: "At the bottom of all the tributes paid to democracy is the little man, walking into the little booth, with a little pencil, making a little cross on a little bit of

paper..." if the electoral law needs to be understood, interpreted and implemented in a manner that benefits the "little man" then it must be so. For the Representation of the People Act, 1951 this would be the essence of purposive interpretation.

50. On a consideration of the entire material placed before us by the learned counsel, we record our conclusions as follows:

50.1. The provisions of clause (3) of Section 123 of the Representation of the People Act, 1951 are required to be read and appreciated in the context of simultaneous and contemporaneous amendments inserting clause (3-A) in Section 123 of the Act and inserting Section 153-A in the Penal Code, 1860.

50.2. So read together, and for maintaining the purity of the electoral process and not vitiating it, clause (3) of Section 123 of the Representation of the People Act, 1951 must be given a broad and purposive interpretation thereby bringing within the sweep of a corrupt practice any appeal made to an elector by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate on the grounds of the religion, race, caste, community or language of (i) any candidate, or (ii) his agent, or (iii) any other person making the appeal with the consent of the candidate, or (iv) the elector.

50.3. It is a matter of evidence for determining whether an appeal has at all been made to an elector and whether the appeal if made is in violation of the provisions of clause (3) of Section 123 of the Representation of the People Act, 1951."

36. This Court is of the considered view that the act of the petitioners in burning the banner of a political party certainly promotes or attempts to promote feelings of enmity or hatred, between different classes of the citizens of India supporting one or the other political party in the name of political party. In the instant case, the adverse impact of burning the banner of a political party has also been proved. It has come in evidence that P.W-2 has clearly stated that prior to the incident there was no tension in connection with election but after the incident there was tension in the village. It has also come in evidence that the petitioners were the workers of another political leader.

37. This court is of the considered view that the basic ingredients of offence under the aforesaid Act of 1951 has been

duly satisfied in the present case and the learned courts below have rightly convicted the petitioners.

38. It has also been submitted that the basic ingredient to attract offence under Section 504 of Indian Penal Code is also missing in the present case. It has been submitted that no offence was committed by the petitioners with the informant when he tried to forbid them from burning the banner; after the incident the accused persons returned to their house and there was no tension between the accused persons and the informant. It has been submitted that there is no evidence to suggest that the accused persons have intentionally insulted the informant to give provocation, intending or knowing that such provocation will cause him to break public peace or commit any other offence.

39. Section 504 of Indian Penal Code is quoted as under:

***"504. Intentional insult with intent to provoke breach of the peace.-** Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."*

40. Section 504 of Indian Penal Code deals with intentional insult with intent to provoke breach of peace and the prosecution must prove:

- (i) That the accused insulted some person;
- (ii) That he did so intentionally;
- (iii) That he thereby gave provocation to that person;
- (iv) That he intended, or knew that it was likely, that such provocation would cause that person to break the public peace, or to commit any other offence.

41. It has also come in the evidence that the informant tried to stop the petitioners but they threatened him for beating and abused him. The act of the petitioners in burning the banner was intentional, causing insult to the informant which was with

an intent to provoke breach of peace. The act of the petitioners caused tension in the village in connection with election. This Court is of the considered view that the learned courts below have considered the materials on record and have convicted the petitioners for the offence under Section 504 of Indian Penal Code and there is no scope for reappreciation of evidences on record and coming to a different finding.

42. As a cumulative effect of the aforesaid findings, this Court does not find any illegality, perversity or material irregularity in the impugned judgements of conviction of the petitioners in revisional jurisdiction. This criminal revision petition is accordingly dismissed.

43. Bail bonds furnished by the petitioners are hereby cancelled.

44. Interim order, if any, stands vacated.

45. Pending interlocutory applications, if any, are closed.

46. Let the Lower Court Records be immediately sent back to the court concerned.

47. Let a copy of this order be communicated to the learned court below through 'FAX'.

(Anubha Rawat Choudhary, J.)